CIRCUIT COURT, *Pennſylvania* Diſtrict.

April Term, 1792.

Preſent—WILSON, BLAIR and PETERS, *Juſtices.*

COLLET *verſus* COLLET.

THIS was a bill in Equity, which ſtated the complainant to be *a ſubject of his Britannic Majeſty*, and the Reſpondent to be a citizen of *Pennſy vania*. The Reſpondent in his plea averred, that the complainant was *a citizen of Pennſylvania*; and this plea, if true, deprived the Court of its juriſdiction, as the Federal Courts cannot (unleſs in ſome particularly ſpecified caſes) take cognizance of controverſies between citizens of *the ſame State*. The queſtion was argued on the 21ſt of *April* by *Randolph* and *Serjeant*, in ſupport of the bill, and by *M. Lévy* in ſupport of the exception to the juriſdiction. It then appeared, that the complainant was born in the *Iſle of Man*, part of the *Britiſh* dominions; but it was certified, by the Mayor of *Philadelphia*, that on the 30th of *April* 1790, he had taken the oath of allegiance to the State of *Pennſylvania*, agreeably to an act of the General Aſſembly, paſſed the 13th of *March* 1789. 2 *Vol. Dall. Edit. p.* 677. founded on the 42 ſection of the old Conſtitution. 1 *Vol. p.* 60. *in App.* It was, likewiſe, ſhewn by a certificate from the Collector of the Cuſtoms of the port of *Philadelphia*, that on the 5th of *November* 1790, he was commander of *the Pigou*, an *American* ſhip; and the 6th ſection of the act of *Congreſs*, for regiſtering and clearing veſſels (*Ch* 11, paſſed 1 *September* 1789.) provides, that no regiſtry ſhall be made of any *American* ſhip, until it is ſworn (among other things) that "the preſent maſter is a citizen of the *United States.*"

In

In ſupport of the plea, it was contended, that the power given to the *United States*, was meant as a guard againſt the narrow regulations that might, at any future period, be adopted by the individual States, to check the admiſſion of aliens; and not as a ſecurity againſt the too eaſy extenſion of the rights of citizenſhip. This object would, therefore, be moſt effectually attained, by leaving the authority of the individual States unimpaired; and as there is nothing excluſive in the nature of the power, ſo neither is their any thing excluſive in the manner of veſting it in the Federal Government. Though "*Congreſs* ſhall have power to eſtabliſh an uniform rule of naturalization," *Art.* 1. *ſ.* 8. it does not neceſſarily follow, that each State of the confederacy may not, likewiſe, exerciſe the power of adopting aliens upon its own terms. That an opinion prevails here, in favor of the State juriſdiction, muſt be inferred from the various laws, which *Pennſylvania*, even ſubſequent to the naturalization act of *Congreſs*, (paſſed 26th of *March* 1790) has enacted, reſpecting the right that aliens may enjoy within her territory. 3 *Vol. Dall. Edit.* 9 183. 653. Nor is there any force in the argument, that the juriſdiction in Maritime and Admiralty caſes is excluſively veſted in the Federal Government, without the uſe of excluſive words; for, thoſe in their nature are excluſive, belong appropriately to the national character, and ariſe extra-territorially of any State; whereas naturalization is merely a municipal and domeſtic concern. 1792.

In oppoſition to the plea, it was urged, that contemplating the preſent ſituation of the *United States*, the birth of the complainant had made him an alien; and that in order to change the condition of alienage into that of citizenſhip, the interpoſition of a competent conſtitutional and legiſlative authority was indiſpenſable. This authority, throughout the *United States*, reſides in the Federal Government alone; for, the power of naturalization (which is given by the 8th ſect. of the 1ſt Art. of the Conſtitution) does of itſelf import excluſion. That one member of the Union ſhould be able to diſturb all the reſt, by the introduction of obnoxious characters, was an evil to be prevented, and no effectual mode could be adopted to obviate the inconveniences of different ſyſtems and regulations in different States, ſhort of giving to *Congreſs* the excluſive power of eſtabliſhing an uniform rule of naturalization. Excluſive words were not neceſſary in this caſe, any more than in the caſe of Admiralty and Maritime juriſdiction, which is, nevertheleſs, allowed to be excluſively veſted in the General Government without the uſe of ſuch words. If, therefore, *Congreſs* had the excluſive power to admit citizens, that power being exerciſed by the act of the 26th *March* 1790, the naturalization, under an act of the Legiſlature of *Pennſylvania*, was a mere nullity, and the complainant remains a ſubject of the *Britiſh* crown.

BY

1792. BY THE COURT:—The queſtion, now agitated, depends upon another queſtion; whether the State of *Pennſylvania*, ſince the 26th of *March* 1790 (when the act of *Congreſs* was paſſed) has a right to naturalize an alien? And this muſt receive its anſwer from the ſolution of a third queſtion; whether, according to the conſtitution of the *United States*, the authority to naturalize is excluſive, or concurrent? We are of opinion, then, that the States, individually, ſtill enjoy a concurrent authority upon this ſubject; but that their individual authority cannot be exerciſed, ſo as to contravene the rule eſtabliſhed by the authority of the Union. The objection founded on the word *uniform*, and the arguments *ab inconvenienti*, have been carried too far. It is, likewiſe, declared by the Conſtitution (*art.* 1. *ſ.* 8.) that all duties, impoſts and exciſes ſhall be *uniform* throughout the *United States*; and yet, if expreſs words of excluſion had not been inſerted, as in a ſubſequent part of the ſame article (*ſ.* 10.) the individual States would ſtill, undoubtedly, have been at liberty, without the conſent of *Congreſs*, to lay and collect duties and impoſts. Again;—when, it is ſaid, that one State ought not to be privileged to admit obnoxious citizens, to the injury of another, it ſhould be recollected, that the State which communicates the infection, muſt herſelf be firſt infected; and in this, as in all other caſes, we may be aſſured, that the principle of ſelf-preſervation will inculcate every reaſonable precaution.

The true reaſon for inveſting *Congreſs* with the power of naturalization has been aſſigned at the Bar:—It was to guard againſt too narrow, inſtead of too liberal, a mode of conferring the rights of citizenſhip. Thus, the individual States cannot exclude thoſe citizens, who have been adopted by the *United States*; but they can adopt citizens upon eaſier terms, than thoſe which *Congreſs* may deem it expedient to impoſe.

But the act of *Congreſs* itſelf, furniſhes a ſtrong proof that the power of naturalization is concurrent. In the concluding proviſo, it is declared, "that no perſon heretofore proſcribed by any State, ſhall be admitted *a citizen* as aforeſaid, *except by an act of the Legiſlature of the State*, in which ſuch perſon was proſcribed." Here, we find, that *Congreſs* has not only circumſcribed the exerciſe of its own authority, but has recognized the authority of a State Legiſlature, in one caſe, to admit a citizen of the *United States*; which could not be done in any caſe, if the power of naturalization, either by its own nature, or by the manner of its being veſted in the Federal Government, was an excluſive power.

Upon the whole, the Court think that the plea to the juriſdiction has been maintained; and, therefore,

The Bill muſt be diſmiſſed.*

April

* It is remarkable that the argument in this caſe, turned entirely upon